Supreme Court, U.S.
FILED
FEB 26 1990
JOSEPH F. SAPNIOL, JR.
CLERK

89 - 1485

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

Louis E. Clark, Petitioner

v

Circuit, Seventh Judicial Circuit,
South Dakota, Respondent

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF SOUTH DAKOTA

PETITION FOR WRIT OF CERTIORARI

Louis E. Clark, Pro Se
111 Rural Retreat
Grafton, Va., 23692
804-898-3418

QUESTIONS PRESENTED

1. Did the circuit court abuse its discretion and/or misinterpret the statutes and persuasive common law in not revoking the executors letters for failure to inventory, undue delay, waste, negligence and mismanagement and thereby deprive the petitioner of property and rights without due process of law guaranteed by the 14th Amendment?

2. Did the fact that court procedures for attending hearings by telephone call or papers alone or both are not published in South Dakota Codified Law or in local court orders deprive petitioner of property and rights without due process of law?

LIST OF PARTIES

Petitioner believes all of the judges of the circuit court located at the Pennington County Courthouse in Rapid City, S. D. have been involved with this case: The estate of Edna A. Clark, Circuit Court file 87-29. The Honorable John K. Konenkamp is Presiding Judge. The others are: The Honorable Jeff W. Davis, The Honorable Merton B. Tice, The Honorable Marshall Young and The Honorable Roland E. Grosshans.

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TABLE OF AUTHORITIES

TEXTBOOKS

Administration of Decedents Estates, 2d Ed. 1978; by Eustace W. Tomlinson, J.D., Prentice Hall, Inc. Paragraphs: 3.5-1; 3.5-2; 6.16-2; 6.16-2b; 7.1; 14.4-8; 14.31-1.

24CalJur 3d. Decedents Estates, 1975. Page 170. Cites many cases and discusses the role of the court in probate.

52AmJur2d. Mandamus page 687. Note 10 327P2d292. Mandamus in abuse of discretion in keeping estate open for an undue period.

STATEMENT OF JURISDICTION

The final judgment of the Supreme Court of South Dakota was filed on November 27, 1989. An order denying motions for rehearing was filed February 22, 1990. A copy of these orders appears in appendices A and C at pages 32 and 61 respectively. The jurisdiction of this Court is invoked under 28 USC 1257(3).

CONSTITUTIONS AND STATUTES INVOLVED

This case involves: (1) Section I of the 14th Amendment to the Constitution of the U.S. (2). The South Dakota Constitution, Article VI, Bill of Rights; (2) Due Process-Right to Work. It may be found in S.D. Codified Laws, Vol. I., 1978 Rev. page 312. (3) South Dakota Codified Statutes: 30-14-1; 30-14-2; 30-14-4; 30-16-1; 30-16-2; 30-16-11; 30-16-12; and 30-17-1. All are given verbatim in Appendix D, page 62.

STATEMENT OF THE CASE

Louis E. Clark, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the South Dakota Supreme Court entered in the above-entitled case on November 27, 1989. Petitioner originally applied for writ of mandamus filed in the Supreme Court of South Dakota pursuant to Champter 21-29 of the South Dakota Codified Law(SDCL). Said application requested the court to issue a Writ of Mandamus commanding the Respondents: (1) To revoke the letters of the executor in accordance with SDCL 30-16-12 or (2) To revoke the letters of the executor in accordance with SDCL 30-14-2. or (3) To suspend and investigate the executor in accordance with SDCL 30-14-4. (4) To issue letters to Louis E. Clark.(5) To hear petitioners motions and petitions based on the papers and not required him to travel from Virginia to South Dakota for hearings. (6) To order the executor not to petition the court for orders for

orders for which he already has the power in the will and to give the heirs 3-4 months notice before taking actions of this type.

Louis E. Clark, petitioner, lives at 111 Rural Retreat Road, Grafton, Va., 23692, Petitioner is a son and one of the heirs of Edna A. Clark, decedent. As such heir and devisee, petitioner is entitled to a distribution of an undivided one-fourth share of the real property consisting of a house situated on three lots at 726 South Street, Rapid City, S.D. Petitioners sister, Margaret L. Clark, is entitled to an undivided one half share, and his brother, Howard F. Clark is entitled to an undivided one-fourth share. Each heir is entitled to one third of the household goods and furnishings which the will says they are to divide among themselves. Edna A. Clark died on June 14, 1986; the executor was notified several days later and letters were issued to the executor on August 11, 1986. The executor of the Edna A. Clark estate is the Norwest Capital Man-

agement & Trust Company represented by Garry Gunderson, Trust Officer, POB 1040, Rapid City, SD, 57709. A partial distribution of personal property was made by court order on July 22, 1987. The house has been unoccupied since Edna Clarks death. The executor has recently sold the house in a contested hearing. The sale was closed on February 12,1990, although it now appears the executor has never filed a notice of entry of final judgment. Petitioner alleged in his objections to sale that the executor and real estate agent had fraudulently misrepresented their sales effort to me; that they had perpetrated fraud upon the court and that their appraisals were fraudulent, etc. The circuit court appeared to ignore these triable issues of fact joined in probate proceedings. Next petitioner alleged the executor suddenly repaired the foundation wall in order to sell the house to one particular party and not at auction and to destroy evidence of his negligence in

letting the wall freeze solid. And to prevent me from staying in the house while I sued them. Petitioner was unable to obtain a stay of order by telephone and express mail before the evidence was destroyed. A copy of the objections of petitioner has been requested for this Honorable Court.

The federal question of deprivation of rights and property without due process of law was raised on pages 2, 10, 16, and 17 of petitioners application to the Supreme Court of S.D. for writ of mandamus. Appendix E page 67 contains verbatim quotes from these pages. A copy of the original application has been requested for this Honorable Court. Petitioner estimates the executor has now spent over $30,000(including lost rent or interest) to sell the house for $46,000. This is discussed in Exhibit 35 of the original application.

REASONS FOR GRANTING THE WRIT

This case concerns the guardianship and supervisory role of the circuit court over the executor and probate estate and is of great significance to people throughout the country because the probate system is one of the few ways that the average law abiding citizen comes in direct contact with the legal system. If this case is typical, the average person will have to consider when selecting a corporate exector, whether their children will have to employ independent lawyers to insure that their will is carried out by the executor and court. If the circuit court does not exercise a guardianship role and becomes just a rubber stamp, the executor may be unsupervised because the heirs many live 1000s of miles away. I believe the guardianship role of the circuit court in probate is separate and distinct from the referee type role of the judge in cases at law and that the court has a unique duty to the heirs. Several SD statutes imply this role and alt ho

I cannot locate any South Dakota cases; the SD probate statutes were largely taken from the California Code in the late 1800s and many statutes are still identical today. 24CalJur3d, page 170 cites many cases and says the court alone directs and controls the executors actions. In Muhammad Estate, 16CA 3d726,94CalRpts856(given in CalJur) the court said: "The probate court is guardian of the estate of deceased persons. All proceedings are under the courts direction and the executor or administrator derives his power to act from order of the court." The court did not appear to exercise much guardianship in this case and the estate seems headed toward bankruptcy because of this.

Petitioners original application to the South Dakota Supreme Court sets out in detail the facts and documents that indicate abuse of discretion by the circuit court. The petitioner applied for the writ only after numerous letters to the court about wastage and delay produced no results.

As far as the petitioner can determine from talks with Margaret Clark and letters from her concerning items on the inventory and lists she sent me in 1986; the executor has never conducted an inventory required by SDCL 30-14-12. Margaret Clark did the inventory and also contacted local people for appraisals. The executor did not file an inventory until May 22, 1987, 11 months after decedents death and two months beyond the statutory deadline. The circuit court did nothing. The executor filed Margaret Clarks inventory which was mostly in her handwriting. Petitioner believes the oath required from the executor by SDCL 30-16-11 implies the executor must make a diligent search to locate estate assets and protect them. Petitioner believes the executor did neither. This is obvious since until a letter from me recently, the executor did not even locate a $4500 savings account in Norwest Bank(their affiliate on the first floor of his office building) that Margaret Clark closed out in 1986. How-

ard Clark told me this. The executor will not answer my letters. In Nov. 1989 the petitioner found Black Hills gold jewelry with a wholesale value of about $?00 in estate property Margaret Clark had stored in the basement. In 1986 Margaret Clark decided on her own that this personal property had no value(letter to me) and did not include it on her inventory. She removed and stored the property in a ministorage for a year and then returned it to the house in 1987 and stored it with a large amount of her personal effects. I also found some antique costume jewelry belonging to my mother and grandmother that could have considerable value to collectors, a collection of china figurines, old photographs from the 19?0sand30s many books, etc. Property I saw in 1986 is missing-a 22 rifle. Also missing are games, a train set, toy soldiers, board games from 1930s and 40s with collectible value. The book: Administration of Decedents Estates gives steps he should have taken to avoid this. Margaret

Margaret and Howard deny any knowledge of this lost property. I believe the executor is liable for the loss. In summary, I believe the executor failed to take inventory required by statute and only recently at my insistence has he finally inventoried property stored for 3 years or more and now only because he has sold the house. The executor swore to an inventory he did not conduct and did not file within time limits. The executors total lack of inventory and protection has caused me damage. I believe the circuit court has greatly abused their discretion by failing to supervise the executor and finally to revoke his letters.

Petitioner also applied for mandamus based on wastage, negligence and delay, in accordance with SDCL 30-14-2 and 30-14-4. The application of these statutes obviously depends on the discretion of the court as to what is waste, mismanagement and delay in settlement and delivering up of the estate. I believe there are limits to the courts

discretion that cannot be exceeded. The court should not substitute its discretion for the will of the deceased and the court should always require the executor to act as would a prudent man or good business man.

Petitioner believes the function of the executor is to pay the bills, settle the claims, distribute the property according to the will and close the estate as quickly and with as little expense as possible. And that when the executor petitions the court, the guardianship responsibility requires that the court insure that the above is done. The court cannot knowingly permit an executor to delay distribution and closing of an estate.

In this case the decedents will was straight forward. She left the real property in common to her three children--one half to her daughter and one fourth to each of two sons and one third of her personal property to each child to be divided among themselves. The executor had the money to pay all bills in the first 3-4 months after Edna Clarksdeath

There were only a small number of bills. All that remained to do was distribute a small estate. The executor could have distributed the real estate in common and if necessary obtained a court order dividing the personal property if the children had not agreed on a division in two months--plenty of time for this small estate. Instead the executor made a decision not to do this and delayed distribution and closing of the estate, saying he could do nothing until the children had divided the property. He did not tell petitioner this until petitioner had returned to Virginia. The Court knowingly permitted the executor to do this. Petitioner believes this is wrong and that according to the book by Tomlinson the executor must take an active role in seeing that the property is promptly divided. Otherwise, one heir can deliberately delay closing at the expense of the others as occurred in this case. Consequently, the house was unoccupied about the first year while Margaret Clark and possibly

Howard Clark delayed division of the property, and while the executor also delayed selling the house because he wrote Margaret did not want the house sold at that time. Petitioner believes this was obviously not the will of the deceased and that the court greatly abused its discretion in allowing the executor to continue this delay. Petitioner believes this is sufficient grounds for revocation of letters based on undue delay for about the first year and wastage due to house expenses for heat, water, lights, yard work, telephone, insurance, taxes, etc. during this time. The executor did not even try to rent or sell the house during this time. The executor was showing extreme partiality to Margaret and allowing her to delay the closing at the expense of the other heirs. Margaret Clark wanted to buy her brothers share of the house in 1986 but could not obtain financing. She believed when she finished college she could get a job and buy the house. Also she had no other place to store all of her furniture. No prudent

person or astute business man would ever let a $58,500 property sit idle for a year providing no income. The court has obviously abused its discretion in not revoking the executors letters for undue delay.

The executors actions after the preliminary distribution of personal property and order for private sale of real estate in July 1987 follow the same pattern. Although there are dozens of competent real estate agents in Rapid City, the executor insisted on hiring an agent who had previous dealings with Margaret Clark and who was going to act as her rental agent if she could buy the house. This agent, Larry Wright, has been buying and renovating old houses in Rapid City since the early 1970s and now lives in an old house three doors down the street from the estate house. Petitioner imagines that most of these old houses have come on the market from estate sales.

The details and documents showing when the court became aware of these facts are

contained in the record and are not repeated here because of their volume. Petitioner believes the main point to be shown is that the court continually abused its discretion in allowing the executor to take actions that no prudent man or good business man could possibly take and remain in business and this is what happened to the estate--it was going bankrupt. Some of thse actions are described below:

1. The executor, even though he is an expert professional in handling estates, insisted on obtaining court orders for virtually every step he took and this caused the estate unnecessary expense. Petitioner can think of only two reasons for doing this. One to increase legal expenses and two to protect himself in the future from legal action since he was able to do this at the time in essentially uncontested hearings. These matters included: (a) Petition for instructions after the personal property was already divided and he had to either sell

the house or distribute the house in common. (b) Order for private sale of real estate and allowing partial distribution of personal property. He had the authority in the will to sell the house.(c) Petition and Order authorizing brokerage contract for sale of real estate. He had will authority for this. (d) Petition and Order to mortgage real estate. He had authority in the will. (f) Petition and order for second reappraisal of real property. And in addition all the associated notices, affidavits, and hearings for the six actions. No prudent business man could possibly afford to make these unnecessary legal expenses when he already had the authority and expertise.

2. The executor states he received no offers for the house from about Aug. 1987 to July 1989. Instead of soliciting offers from the many people who were shown the house to try and establish a level at which people would buy, he continued to show the house at the original appraisal of $58,500 until May

1988. Petitioner believes no prudent person or business man would do this, but after several months would talk to possible buyers and try to establish the price at which they would be interested. Therefore; petitioner believes that the executor was not really interested in selling the house and was delaying the sale for Margaret Clark or some other party.

3. The only basis for the reappraisal in May 1988 from $58,500 to $53,900 was the statement by Larry Wright, the real estate agent, that that the house was not selling so the price should be lowered. Only after the petitioner wrote letters and submitted motions to the court did the lawyer and not the real estate agent submit comparable houses. The only reason Petitioner can think of for this is that the real estate agent did not want to submit these houses as comparable. And the Petitioner did not find the houses comparable but was unable after motions and requests to have the court order the submission of houses that were comparable. Petit-

ioner believes that no prudent man or business man would ever rely only on the word of one real estate agent who had produced no buyers in a year and a lawyer. Almost anybody would have obtained free market value appraisals available from dozens of real estate agents in Rapid City. Petitioner believes the court obviously abused its discretion in granting this reappraisal after the petitioner had requested submission of comparable houses several times and it would have been so easy to obtain reappraisals from several other agents or even the original appraiser in 1986 who apparently was never consulted. The only reason Petitioner can think of is that the executor, lawyer, and real estate agent were attempting to gradually lower the price and delay the sale for Margaret Clark or some other party. The property had also been re-appraised by the Pennington County Director of Equilization in 1987 and this was available to the Executor who even wrote in 1987 that he was looking into the tax appraisal.

The tax appraiser is located in the basement of the court house. Depending on how you extrapolate his values the land alone was worth $41,000 to $47,000 so this indicated a much higher appraisal. Petitioner only discovered this in the fall of 1989.

4. In the spring of 1989 the executor wrote asking if the heirs objected to lowering the appraisal to $49,000. Again he had continued to show the house at the reappraisal of $53,900 without even attempting to solicite offers from prospective buyers for another year. Petitioner responded saying he and his brother had decided they would rather rent than sell below $49,000. The executor then again obtained another court reappraisal based almost entirely on the word of Larry Wright that since the house was not selling the price should be lowered again. Petitioner believes the executor diverted his attention with letters asking permission and discussing possible rental so the executor could again obtain a reappraisal without submitting sales

of comparable houses or estimates from any other agents or experts or even the original appraiser. Again no prudent person or business man would ever have relied solely on the word of one agent and probably would have changed real estate agents long before this. Otherwise they would go bankrupt. The exector refused to change agents.

5. A prospective buyer at about $47,000 was located after the second reappraisal to $49,900.(The executor is allowed to sell up to 10% below appraisal.) This party had questions about the west foundation wall and Mr. Wright then appeared to go out of his way to obtain a negative inspection of the west foundation wall by a structural engineer rather than consult the original appraiser who in 1986 found the wall required no repairs. Petitioner talked to the wife of this couple when he arrived in Rapid City to remove his property in August 1989. She told him they were not shown the original appraisal for $58,500 which said the wall did not need re-

pairs. The executor told them they could not see the utility bills. The executor and Mr. Wright did not tell them many important selling points about the condition of the house; did not tell them the house was in the West Blvd. Historic District and on the National Register; and might be eligible for lower interest rate rehabilitation loans and a 20% tax credit; and did not tell them the city had appraised the land alone at about $41,000 to $47,000 in 1987. These people had already bought another house by the time petitioner talked to them. Petitioner believes no prudent person or business man would ever try and sell a house this way. The circuit court was aware of this from petitioners objections to sale and took no action, but approved the sale later to another party at about the same price.

Petitioner believes he has been deprived of property without due process of law by this system. If the executor is held to have followed the law then the laws are unconstitutional.

Petitioner discovered only in November 1989 that he could appear at hearings by speaker telephone. The availability of speaker phones is not in the SDCL or in local court orders so this is essentially unwritten law and unconstitutional. If other persons have been using the speaker phone system, then the petitioner believes he has been discriminated against and deprived on his rights. There are no local or SDCL rules concerning whether motions and petitions must be supported by affidavits or oral testimony will also be taken at hearings. Apparently the practice is to do both. Petitioner again believes this is unwritten law and unconstitutional and deprives him of due process and is discriminating against him.

Some of this recent information is not in petitioners original application for writ of mandamus,but is in his affidavit objecting to confirmation of sale and several other submissions to the South Dakota Supreme Court. These were essentially requests forarehearing

on the basis of new information. The court has not yet decided if they will accept this material which was not specifically titled request for rehearing.

In August-September 1989 after petitioner began asking around Rapid City about the possible antique historic value of this house and was also discussing legal action against the executor; another agent at the agency employing Larry Wright came up with the second serious buyer. The first buyer had been produced by another agency. The executor had written the heirs he might sell the house at public auction and wanted their views by Sept. 15, 1989. Petitioner waited in Rapid City until he had to return to Virginia to turn on his furnace. About this time in early Nov. the executor noticed a hearing to confirm sale to the second buyer Mr. Jim Wilson. Petitioner believes the executor deliberately waited until he knew I would have to return to check the heat. The buyer Mr. Wilson had complained to me about the executors delay. Petitioner

understands Mr. Wilson changed his mind about buying and at the hearing Nov. 30 1989 (I could not attend) had agreed to give Margaret Clark a week to try and obtain financing. She could not and the sale was off until Mr. Wilson changed his mind again and decided to buy. He also had financing problems I heard. Margaret said Mr. Wilson had agreed to sell to her when he leaves Rapid City. He is stationed at the air base there. The Court Order Confirming Sale ignored petitioners objections that no valid appraisal existed to justify the low price and ignored the appraisal figures from the Director of Equilizations Office that the appraisal could be much higher. Petitioner attended the continued hearing on Dec. 8, 1989 by speaker telephone. Judge Tice refused to let me bring up matters in my affidavit objecting to sale by saying these matters were not before him at this continuance. I objected. Petitioner now believes the property may have a combined commercial-house value of $60,000-$70,000.

The order for confirmation of sale was written in very general terms and I cannot tell which of my objections are considered untimely and unproper. Judge Tice signed the order before the expiration of a waiting period for objections and proposals to the proposed order. Petitioner has filed motions to consider his objections to the proposed order and for relief from second reappraisal and for trial by jury of issues of fact joined in probate proceedings.

The attorney for the estate called on Jan. 24, 1990 and said the closing was Feb. 2, 1990 and my personal property was to be removed. The executor was having the west foundation wall replaced so Mr. Wilson could get a loan. The contractor agreed to wait for payment. Petitioner tried to set up a telephone hearing on the validityof the order signed too early and then a telephone hearing for a stay of order to prevent the wall from being destroyed because it was evidence of the executors negligence in letting

the wall freeze solid. The first Judge, Young, said Petitioner would have to have a lawyer before he would hear a telephone motion and the Presiding Judge agreed. Petitioner spent several days calling the larger law firms employing about 45 lawyers total, however all had conflicts with Norwest Bank. Several smaller firms also had problems. Then Judge Konenkamp, Presiding Judge, changed the judge on this case to Judge Tice. I was unable to contact Judge Tice before the wall was removed. On the day I tried to contact Judge Tice and could not the executors attorney had him sign an order on ex parte motion allowing them to remove my property so the wall could be removed. The house would be open with the wall gone. Petitioner believes the executor is now going out of his way to sell the house to this particular buyer and not at auction at what appears to be a low price. A sale at public auction might have revealed their false and fraudulent appraisals. I believe this isbeing done so I cannot

stay in the house while I investigate and sue the executor.

The filing date on the executors original petition for letters appears to have been altered by pen to July 22, 1986 and it appears that the executor missed the statutory period for filing his petition. Judge Konenkamp and Judge Tice would not return my calls to discuss this. Finally after three calls and three days Judge Tice said the Petitioner would have to make a motion and schedule a hearing on this. Judge Tice apparently would not release the original petition to a document examiner either without a hearing. Petitioner does not know who the opposing party would be because if the date has been altered this is forgery in SD and a felony. Petitioner has asked law enforcement to investigate this. The situation has become so controversial that petitioner believes the executors interests must be antagonistic to his fiduciary role and he should at least be suspended until these matters are reconciled.

The respondents appear to be allowing the executor considerable latitude to sell the house without a recent appraisal at what appears to be a low price to a particular buyer and avoid public auction, and then to close the estate. They may then advance the argument that the questions presented by this petition are now moot. The petitioner believes this is not so. That the respondents have still abused their discretion in not revoking the executors letters and in not doing so caused the petitioner loss of property without due process of law and damages. Petitioner respectfully requests the court to note that time may be of the essence in this case. Petitioner is ready to meet any schedule for briefing and oral argument that the Court may wish to set.

Louis E. Clark
111 Rural Retreat
Grafton, Va. 23692
804-898-3418
(12Noon -2PM)

March 17, 1990

APPENDIX A

COPY

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Louis E. Clark, Applicant, vs. Circuit, Seventh Judicial Circuit, Respondent	Order Denying Application For Writ of Mandamus

#16895

Applicant having served and filed an application for a writ of mandamus in the above-entitled matter, and the Court having considered the application and being fully advised in the premises, now, therefore, it is

ORDERED that said application be and it is hereby denied.

DATED at Pierre, South Dakota, this 27th day of November, 1989.

BY THE COURT:

George W. Wuest
Chief Justice

ATTEST:
Gloria J. Engel
Clerk of the
Supreme Court
(Seal)

Supreme Court
State of South Dakota
FILED
NOV 27 1989
Gloria J. Engel
Clerk

APPENDIX B

STATE OF SOUTH DAKOTA)
) SS:
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

File No. 87-29

IN THE MATTER OF THE ESTATE OF EDNA A. CLARK,
Deceased.

LETTERS TESTAMENTARY

The Last Will and Testament of Edna A. Clark, deceased, a copy of which is hereunto attached, having been proved and recorded in the Circuit Court in and for the Seventh Judicial Circuit, Pennington County, South Dakota; Norwest Capital Management & Trust Company, successor to First National Bank Trust Company, who is therein named as executor, is hereby appointed executor.

Dated at Rapid City, South Dakota, this 11th day of August, 1986.

BY THE COURT:
/s/ Jeffry W. Davis
~~Hon~~orable Jeff W. Davis
Circuit Court Judge

ATTEST:
EILEEN HOWE, CLERK OF COURTS
By /s/ Jean Nesbett
Deputy

(SEAL)

STATE OF SOUTH DAKOTA)
) SS:
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL
CIRCUIT

File No. 87-29

IN THE MATTER OF THE ESTATE OF EDNA A. CLARK,
Deceased.

CERTIFICATE OF PROOF OF WILL AND ORDER ADMITTING WILL TO PROBATE

Pursuant to due notice, the hearing on the Petition of Norwest Capital Management & Trust Company for probate of the Last Will and Testament of Edna A. Clark dated August 16, 1979, and Codicil to the Last Will and Testament of Edna A. Clark, dated May 29, 1980, was held on August 11, 1986, at 1:15 p.m. in the chambers of the undersigned Judge at the Pennington County Courthouse at Rapid City, South Dakota. The Petitioner, Norwest Capital Management & Trust Company, was represented by its counsel, James H. Wilson, of Wilson, Olson & Nash, P.C. The Court examined the Will and Codicil of the decedent dated August 16, 1979 and May 29, 1980, respectively, and ascertained that the attestation clauses were in due form

with the requisite number of witnesses. Therefore, there being no contest proceedings filed, the Court determined that the Will was duly executed, that the testatrix, Edna A. Clark, at the time of execution thereof was of sound and disposing mind and not acting under duress, mena ce, fraud or undue influence. Now, therefore,

IT IS HEREBY ORDERED that the Last Will and Testament of Edna A. Clark, dated August 16, 1979, and the Codicil to Last Will and Testament of Edna A. Clark, dated May 29, 1986, are hereby admitted to probate. The Court further finds, adjudges and decrees that it has jurisdiction over this probate matter because the decedent, Edna A. Clark, died at Rapid City, Pennington County. South Dakota, on June 24, 1986, where she was a resident at the time of her death and also had estate located therein.

IT IS FURTHER ORDERED that Letters

Testamentary shall be issued to Norwest Capital Management & Trust Company.

IT IS FURTHER ORDERED that the filing of oath and bond by such Executor shall be dispensed with pursuant to SDCL 51-19-9,

Certified this 11th day of August, 1986.

BY THE COURT:

/s/ Jeffrey W. Davis
Honorable Jeff W. Davis
Circuit Court Judge

ATTEST:

Eileen Howe, Clerk of Courts

By: /s/ Jean Nesbett
Deputy

(SEAL)

(Copiers note: The date of death given in this order as June 24, 1986 is incorrect. Decedent died June 14, 1986)

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) SS: SEVENTH JUDICIAL
COUNTY OF PENNINGTON) CIRCUIT

File No. 87-29

IN THE MATTER OF THE ESTATE OF EDNA A. CLARK, Deceased.) ORDER FOR HEARING

The Petition of the Executor was presented to the Court and it appears that there is a justiciable question concerning whether it is necessary or that it would be for the advantage, benefit, and best interest of the estate and those interestested therein to sell the whole or some portion of the property of the estate, it is hereby

ORDERED that notice be given by mail to the three (3) children of the decedent to appear before the Court to be heard concerning the issue presented by the Petition on the 13thday of July, 1987, at the hour of 11:00 o clock a.m., in the courtroom of the Courthouse at Rapid City, South Dakota.

NOTICE OF THE HEARING shall be given by mailing a true copy of this Order and

and the Petition to the following named persons by ordinary mail, postage prepaid at their last known addresses:

NAME	ADDRESS
Margaret Lou Clark Daughter	1017S. Alvarado St. Los Angeles, CA 90006
Louis Edward Clark Son	11 Rural Retreat Rd. Grafton, Va., 23692
Howard Frederick Clark Son	2143 Belleview Ave. Los Angeles, CA 90026

said notice shall be mailed at least fourteen (14) days before the hearing hearof.

Done this 12 day of June, 1987

BY THE COURT:
/s/ Frank E. Condon, Clerk of Court

/s/by Jean Fuerst, deputy

Pennington County, SD
FILED
In The Circuit Court
JUN 12 1987

Frank E. Condon, Clerk
By /s/ Jean Fuerst Deputy

STATE OF SOUTH DAKOTA)
) SS:
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

File No. 87-29

IN THE MATTER OF THE ESTATE OF EDNA A. CLARK,

ORDER FOR PRIVATE SALE OF REAL ESTATE AND ALLOWING PARTIAL DISTRIBUTION OF PERSONAL PROPERTY

The above matter came on for hearing as ordered and pursuant to due notice on the Petition of the Executor on July 13, 1987, at the hour of 11:00 o clock a.m. The Executor appeared personally through his trust officer, Gary W. Gunderson and also appeared through its attorney, James H. Wilson of Wilson, Olson & Nash, P.C. Also appearing personally at the hearing were Howard Frederick Clark, decedents son, and Margaret Lou Clark, decedents daughter. Louis Clark made no appearance but by telephone call the morning before the hearing to Attorney Wilson, requesting that Attorney Wilson convey his acquiescence to the oral settlement agreed to between himself and

the other children, Howard and Margaret. Louis Clark had previously filed a Petition for Partition by Sale and had written letters to the Court. At the hearing, the Executor, Howard Frederick Clark, and Margaret Lou Clark agreed on the record that the real property of the estate would be sold by the Executor in the course of the probate at private sale, and that the net proceeds of the sale would be used to pay the expenses of administration including Executors fees and attorneys fees, and further including the telephone bills of Margaret Lou Clark and the inheritance tax, all other claims having been paid. After payment of these expenses, the proceeds of the real estate sale would be distributed in conformity with the Will of the decedent, viz: one-half(1/2) to Margaret, one-fourth (1/4) to Howard, and one-fourth (1/4) to Louis. It was also agreed on the record that the personal property listed in Exhibit A introduced in

evidence at the hearing, a copy of which is attached hereto, would be divided and distributed in kind among the three children according to the said Exhibit A. Certain personal property of nominal value, not inventored and presently in storage, would later be divided among the three children and such property is not to be effected by this order.

The Court, after being advised in the premises, approved the family settlement agreement as outlined above and proceeded to treat the Petition of the Executor for instructions as a Petition for the sale of the real estate and a Petition for a partial decree of distribution insofar as the Exhibit A itemized personal property was concerned, the Court finding that it was in the best interests of the estate and the persons interested therein, that a sale of the real estate be had. The Court further found that the family settlement agreement made adequate

provision for payment of administrative expenses, inheritance tax and real estate taxes, and that a partial distribution of the personal property could be had at this time. Now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That the following described real estate shall be sold at private sale for cash to be noticed for offers or bids for at least ninety-percent (90%) of the appraised value, to be received at the office of the Executor on or before August 20, 1987, with an earnest money deposit of 10% to accompany the bid.

Lots 22-24 in Block 123 of the original townsite of the City of Rapid City, Pennington County, South Dakota

2. The personal property described in Exhibit A, annexed hereto, shall be immediately distributed by the Executor in kind to the three children according to Exhibit A, each child to assume the responsibility of shipping or picking up the personal property distributed to such child.

3. All present issues between the three children having been settled by the settlement agreement, the Petition of Louis Clark for Partition is dismissed.

Done this 13th day of July, 1987, nunc pro tunc.

BY THE COURT:

/s/ Jeff W. Davis
The Honorable Jeff W. Davis
Circuit Court Judge

ATTEST:

Clerk of Courts
By/s/ Jean Fuerst
Deputy
(SEAL)

Pennington County, S.D.
FILED
In The Circuit Court
JUL 22 1987
Frank E. Condon, Clerk
By/s/ Jean Fuerst Deputy

STATE OF SOUTH DAKOTA)
) SS:
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

File No. 87-29

IN THE MATTER OF THE ESTATE OF EDNA A. CLARK,
Deceased.

PETITION AND ORDER AUTHORIZING BROKERAGE CONTRACT FOR SALE OF REAL ESTATE

Comes now the Executor of the above estate and requests that the Court authorize the Executor to enter into a written contract with a bona fide broker to assist in the sale of the real estate.

The Petitioner hereby advises theCourt that when the house was offered for sale, no bids were received on the August 20 bid deadline and that there was very little interest in the house, although there were some inquiries.

On August 28, 1987, the attorney for the estate sent the attached letter to the three children of the decedent, requesting that the house be sold to Margaret Lou Clark under the procedures outlined in said letter. Two of the children, Howard Frederick Clark

and Louis Edward Clark, returned the letter signed with the additions outlined in their return letters. Margaret Lou Clark did not return the letter because she was not agreeable with the additions outlined by the other parties. On October 8, 1987, the attorney for the estate wrote to Margaret sending copies of the other two heirs requests, requesting that she return the signed copy of the letter agreement.

On October 10, 1987, the attorney for the estate obtained the attached letter from Margaret Lou Clark.

On November 9, 1987, the Court received a letter dated November 3, 1987, a copy of which is attached, rescinding Louis Edward Clarks consent to the sale and requesting that the house attempt to be sold by a real estate agent.

WHEREFORE, Petitioner prays that the Court enter its Order authorizing a brokerage contract under SDCL 30-22-21

NORWEST BANK SOUTH DAKOTA, N.A.
By Gary Gunderson, Trust Officer

* * *

ORDER

Pursuant to the foregoing Petition, it is hereby,

ORDERED that the Executor may enter into a written contract with a real estate agent or broker to assist in the sale of the house which contract may provide for the payment of a commission from the proceeds of such sale; which commission shall be subject to approval, rejection or amendment by the Court on confirmation of the sale.

IT IS FURTHER ORDERED that the Executor may arrange for the rental of said property pending sale.

DONE this 9th day of November, 1987.

BY THE COURT:

_____

Honorable Jeff W. Davis
Circuit Court Judge

ATTEST:

Clerk of Courts

By_____
Deputy

(SEAL)

Pennington County, S.D.
FILED
In The Circuit Court
November 9, 1987
Frank E. Condon, Clerk

STATE OF SOUTH DAKOTA)
) SS:
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL
CIRCUIT

File No. 87-29

IN THE MATTER OF THE ESTATE OF EDNA A. CLARK,
Deceased.

ORDER

The Executors Petition for Reappraisal of the Estate Real Property came on for hearing upon due notice to all of the heirs on May 31, 1988 at the hour of 8:45 o clock a.m. in the Chambers of the Court.

The Court heard the testimony of Larry Wright, a real estate broker with whom the property had been previously listed. The Court finds that this real estate has been exposed to the market since August 20, 1987 and although there has been constant inquiries, there have been no offers made because the appraisal is too high. Based upon the testimony of the appraiser and the Court being fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED that the appraisal

as listed in the Inventory and Appraisal should be reduced to a fair market value of Fifty-Two Thousand Nine Hundred Dollars ($52,900.00) for the following-described real estate:

Lots 22-24 inclusive in Block 123 of the original townsite of the City of Rapid City, Pennington County, South Dakota.

DONE this 31 day of May, 1988

BY THE COURT

(This signature is virtually illegible) Merton B. Tice?
Circuit Court Judge

ATTEST:

Clerk of Courts
By Marian Gates
Deputy
(SEAL)

Pennington County, SD
FILED
In The Circuit Court

May 31, 1988

Frank E. Condon, Clerk
By Marian Gates Deputy

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) SS: SEVENTH JUDICIAL
COUNTY OF PENNINGTON) CIRCUIT

File No. 87-29

IN THE MATTER OF THE ESTATE)
OF EDNA A. CLARK,)
Deceased.) ORDER

The Executors Petition for Permission to Mortgage Real Estate came on for hearing upon due notice to all of the heirs on October 13, 1988 at the hour of 2:30 o clock p.m. in the Chambers of the Honorable Merton B. Tice, Jr.

The Court finds that there are no longer any funds in the Executors account to pay the expenses for the property including utility bills, delinquent taxes, interest and advertising costs, lawn care, and water bills to date on the residence. The Court being fully advised in the premises, now therefore,

IT IS HEREBY ORDERED that the Executor shall have the authority to borrow Five Thousand Dollars ($5000.00), and give a

mortgage on the premises, which sum will be repaid when the premises are sold.

DONE this 13 day of October, 1988.

BY THE COURT:

/s/ Merton B. Tice, Jr.
Honorable Merton B. Tice, Jr.
Circuit Court J udge

ATTEST:

Frank E. Condon,
Clerk of Courts

By /s/ Jean Fuerst
Deputy

Pennington County,SD
FILED
In The Circuit Court
OCT 13 1988
Frank E. Condon,Clerk
By/s/ Jean Fuerst
Deputy

STATE OF SOUTH DAKOTA)
) SS:
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL
CIRCUIT

File No. 87-29

IN THE MATTER OF THE ESTATE OF EDNA A. CLARK,
Deceased.

ORDER

The Executors Petition for Second Reappraisal of Real Property came on for hearing upon due notice to all of the heirs on May 30, 1989 at the hour of 9:45 o clock a.m. in the Chambers of the Court.

The Court considered the May 4, 1989 letter of Larry Wright, a real estate broker with whom the property had been previously listed, and also the June 16, 1989 Appraisal with comparable sales attached. The Court finds that this real estate has been exposed to the market at the former reappraisal value of Fifty-Two Thousand Nine Hundred Dollars ($52,900.00), and although there has been constant inquiries, there have been no offers made because the appraisal is still too high, and the Court

being fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED that the appraisal as listed in the Inventory and Appraisal should be reduced to a fair market value of Forty-Nine Thousand Nine Hundred Dollars ($49,900.00) for the following-described real estate:

Lots 22-24 inclusive in Block 123 of the original townsite of the City of Rapid City, Pennington County, South Dakota.

DONE this 30 day of May, 1989.

BY THE COURT:

/s/Roland E. Grosshans
Circuit Court Judge

ATTEST:

Clerk of Courts
By /s/ Mariane Gates
Deputy

(SEAL)

(Copiers note: the date June 16, 1989 given in the order should be 1988 and is in error)

Pennington County,SD
FILED
In The Circuit Court
JUN 19 1989
Frank E. Condon,
Clerk
By: /s/ MG

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)SS: SEVENTH JUDICIAL
COUNTY OF PENNINGTON) CIRCUIT

File: Pro 87-29

IN THE MATTER OF THE ESTATE OF EDNA A. CLARK, Deceased.) ORDER CONFIRMING SALE

This matter having come before the Court the 30th day of November, 1989, pursuant to a motion by the Executor of the estate to confirm the sale in this matter, with Margaret Lou Clark being present, the Executor of the estate being present in person and by and through its counsel Frances R. Becker of Wilson, Olson, Nash & Becker, P.C., and the prospective purchaser, James P. Wilson, being present.

The Court reviewed the written objections that were filed with the Court by Louis Clark in this matter, but which were not served upon the other parties, and having determined that the objections presented by Mr. Clark were untimely and improper; and the Court having further found that these were not proper issues to be addressed at

this confirmation hearing and further having found that the issues presented by Louis Clark did not present any justiciable issues which would entitle Louis Clark to a continuance in this matter; and the Court having further found that justice did not demand or suggest that a continuance be granted to Louis Clark. The Court then proceeded to hear the estates position regarding confirmation of sale.

The Court then found that the Offer and Agreement to Purchase entered into by and between the Executor of the estate and James P. Wilson and Debra A. Wilson did satisfy the statutory requirements for a confirmation of sale; and the Court having further heard the position of Margaret Clark which indicated a willingness to bid an amount five percent greater than the bid received from James P. Wilson, but the Court finding that Margaret Clark did not have any documentation available indicating that she would be able to finance such a bid; and the Court further finding that the proposed sale of the prop-

erty was for a sum in excess of ninety percent of the appraised value, and was in excess of $10,000.00; and the Court further finding that time was of the essence with respect to the sale between estate and James P. Wilson; and the Court having further heard from James P. Wilson that he was willing to extend his offer for a period of one week in order to allow Margaret Clark to attempt to obtain financing necessary to support that she could finance a bid five percent greater than the bid presented by James P. Wilson, the Court then continued the hearing until 8:45 a.m. on December 8, 1989.

At the continued hearing on December 8, 1989, the Executor appeared in person by and through its counsel, Frances R. Becker of Wilson, Olson, Nash & Becker, P.C., Louis Clark appeared by means of telephone conference, and James P. Wilson appeared in person and by and through his attorney, John Mairose.

The Court heard from the estate that Margaret Clark was not able to obtain finan-

cing and, therefore, would not be able to place a bid. The Court further heard the position of James P. Wilson that he was no longer interested in purchasing the house, but did not have any legal reasons why he should not be obligated to perform under the Offer and Agreement to Purchase. The Court further heard from Louis Clark, via telephone, regarding the valuation of the property in this matter.

After having heard the positions of the various parties, the Court found that the property has been on the market for an extended period of time and that the bid presented by James P. Wilson and Debra A. Wilson is consistent with what the statute requires prior to a confirmation of the sale in this matter. The Court further found that there was no reasonable expectation that the property could be sold for any other price and that there was no legal justification excusing the Wilsons from the Offer and Agreement to Purchase. It is now,

therefore,

ORDERED, ADJUDGED AND DECREED that the sale of the real estate to James P. Wilson and Debra A. Wilson, being the highest and best bid obtained at the hearing onPetition to Confirm Sale of Real Estate, be and is hereby confirmed and approved for the property described as follows:

> Lots 22-24 inclusive in Block 123 of the original townsite of the City of Rapid City, Pennington County, South Dakota; also known as 726 South Street Rapid City, South Dakota.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Norwest Bank, S.D., N.A., Investments and Trust, as Executor for the estate, shall execute and deliver an Executors deed for such property unto James P. Wilson and Debra A. Wilson forthwith upon payment of approved purchase price and disburse the proceeds of such sale upon further order of this Court.

DONE this 22 day of December, 1989.

BY THE COURT:

By /s/ Merton B. Tice
Honorable Merton B. Tice
Circuit Court Judge

ATTEST:

Ranae Truman, Clerk of Courts

By /s/ Jean Fuerst
Deputy

(SEAL)

Pennington County, S.D.
FILED
In The Circuit Court
JAN 02 1990

Ranae Truman, Clerk
By /s/ JF Deputy

STATE OF SOUTH DAKOTA)
)SS:
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

File: Pro.87-29

IN THE MATTER OF THE ESTATE OF EDNA A. CLARK,
Deceased.

ORDER

This matter having come before the Court pursuant to the Motion made by the Attorney for the Estate, and the Court having determined that time is of the essence and in order for the Estate to comply with the closing, the house must be vacant, it is hereby

ORDERED, ADJUDGED AND DECREED that if the personal property inherited by Margaret Lou Clark and Louis Edward Clark is not removed from the estate home located at 726 South Street by Monday, January 29, 1990, or arrangements have not been made to have the property removed prior to February 2, 1990, the Executor of the Estate may proceed to have the property removed from the Estate home. If the Executor is forced to place

any property into storage, the storage, expense will be divided pro-ratably according to whose property is stored.

DONE this 26 day of January, 1990.

BY THE COURT:

By/s/ Merton B. Tice
Honorable Merton B. Tice, Jr.
Circuit Court Judge

ATTEST:/s/ Ranae Truman
Ranae Truman, Clerk of Courts
By /s/ Claudia Teilert
Deputy

Pennington County S.D.
FILED
In The Circuit Court
JAN 26 1990
Ranae Truman, Clerk
By/s/ CT Deputy

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Louis E. Clark Applicant, vs. Circuit, Seventh Judicial Circuit Respondent	)	ORDER DENYING MOTIONS #16895

The Court having by order of November 27, 1989, denied applicants application for a writ of mandamus in the above-entitled matter, and the time for filing a petition for rehearing in the above-entitled matter having expired on December 17, 1989, and applicant having filed various motions on February 16, 1990, and the Court having determined that the time within which a petition for rehearing can be filed is jurisdictional, now therefore, it is

ORDERED that said motions be and they are hereby denied.

Dated at Pierre, South Dakota, this 22nd day of February, 1990.

BY THE COURT:

/s/ George W. Wuest
Chief Justice

ATTEST:
/s/ Gloria C. Engel
Clerk of the Supreme Court
(SEAl)

APPENDIX D

Section 1 of the Fourteenth Amendment to the Constitution of the United States reads as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The following are verbatim quotes of South Dakota statutes:

SDCL 30-14-1. Resignation of letters before settlement of accounts by executor or administrator. Any executor or administrator may at any time, by writing filed in the circuit court, resign his appointment, having first settled his accounts and delivered up all the estate to the person whom the court

shall appoint to receive the same.

SDCL 30-14-2. Revocation of letters before settlement of accounts-Appointment of successor. If, however, by reason of any delays in such settlement and delivering up of the estate, or for any other cause, the circumstance of the estate or the rights of those interested therein require it, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration.

SDCL 30-14-4. Suspension of executor or administrator when mismanagement, fraud, neglect or removal from state suspected. Whenever the judge of the circuit court has reason to believe, from his own knowledge or from credible information, that any executor or administrator has wasted, stolen, or mismanaged, or is about to waste or steal the property of the estate committed to his charge,

or has committed or is about to commit a fraud upon the estate, or is incompetent to act, or has permanently removed from the state, or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the records of the court, suspend the powers of such executor or administrator until the matter is investigated.

SDCL 30-16-1. Inventory required after appointment-Time allowed. Every executor or administrator shall make and return to the court within nine months after the date of a decedents death a true inventory of all the estate of the decedent except the homestead, if any, which has come to his possession or knowledge.

SDCL 30-16-11. Signing of inventory by executor or administrator-Oath. The inventory shall be signed by the executor or administrator and he shall take and subscribe an oath before an officer authorized to administer oaths that the inventory contains a true statement of all the property of the estate

of the decedent which has come to his knowledge and possession and particularly of all money belonging to the decedent and of all just claims of the decedent against the affiant. The oath shall be endorsed upon or annexed to the inventory.

SDCL 30-16-12. Revocation of letters on failure to return inventory--Liability on bond. If an executor or administrator neglects or refuses to return the inventory within the time prescribed or within such further time not exceeding two months, as the judge shall, for a reasonable cause, allow, the court may upon notice revoke the letters testamentary or of administration, and the executor or administrator is liable on his bond for any injury to the estate or any person interested therein arising from such failure.

SDCL 30-16-2. Employment of appraiser-Names and addresses indicated on inventory. To make the inventory, the executor or administrator may employ a qualified and disinterested appraiser to assist him in ascertaining the

fair market value as of the date of the decedents death of any asset the value of which may be subject to resonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

SDCL 30-17-1. Executor or administrator to take possession and preserve property--Collection of debts and income. The executor or administrator shall take into his possession all the property of the estate except the homestead and personal property not assets reserved to the widow or widower and children or either of them; keep in good repair all buildings and fixtures in his possession; and collect all debts due to the decedent or to the estate and the rents and profits of the real estate, except the homestead.

Art. VI;2 of the SD Constitution reads: No person shall be deprived of life, liberty or property without due process of law.

Following is a verbatim quote from page two of petitioners original application showing that a federal question was raised: "Affiant believes the inaction of the circuit court when required by law has deprived him of property and rights without due process of law in violation of the constitution. The estate has suffered damages of about $30,000 and affiant has damages of about $7500. Affiant also has considerable costs."

Following is a verbatim quote from page ten of petitioners original application showing a federal question was raised: "The affiant has no other remedy since the circuit court was well aware of the executors undue delay and took no action. Because of the circuit courts inaction when required by law affiant believes he has been deprived of his constitutional right of due process of law before deprivation of property. Affiant has suffered damages because of this as stated in one above."

Following is a verbatim quote from page 16

of petitioners original application showing that a federal question was raised: "Affiant believes that the inaction of the circuit court in not revoking executors letters is an abuse of their discretion and has deprived him of his constitutional right of due process and has caused him monetary damages as discussed in one above."

Following is a verbatim quote from page 17 of petitioners original application showing that a federal question was raised: "Affiant resides in Grafton, Virginia and for him to appear in court for a petition or motion hearing would probably cost about $500 in airline fare depending on the time of year and would take several days time. Affiant believes that obviously this is not fair, practicable, or reasonable and that the circuit court has therefore deprived him of his constitutional right of due process and right to represent himself. The circuit court could easily hear the petitions and motions based on the papers or even an exchange of papers between the parties. Affiant has no other remedy available to him."